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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/645,923	08/20/2003	Bill Zimmerman	9604-004	3013

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EXAMINER	
EDWARDS, LAURA ESTELLE	
ART UNIT	**PAPER NUMBER**
1734	

DATE MAILED: 08/11/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/645,923	ZIMMERMAN ET AL.	
	Examiner	Art Unit	
	Laura E. Edwards	1734	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-22* is/are pending in the application.

4a) Of the above claim(s) *1-6 and 15-22* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *7-14* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *22 August 2003* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date *123103*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

I. Claims 1-6, drawn to a method of applying toppings, classified in class 426, subclass 289.

II. Claims 7-14, drawn to an apparatus for applying toppings, classified in class 118, subclass 13.

III. Claims 15-19, drawn to an apparatus for transporting granulates, classified in class 406, subclass 196.

IV. Claims 20-22, drawn to a method of transporting granulates, classified in class 406, subclass 197.

The inventions are distinct, each from the other because of the following reasons:

Inventions II and I are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case the apparatus as claimed can be used for another and materially different process such as manufacturing filters.

Inventions III and I are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the different inventions the invention of Group III is to an apparatus for

transporting granulates while the invention of Group I is to a method of applying toppings to baked goods.

Inventions IV and I are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the different inventions the invention of Group IV is to a method for transporting granulates from a container while the invention of Group I is to a method of applying toppings to baked goods.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

During a telephone conversation with Mr. Schaffer on 7/30/01 a provisional election was made without traverse to prosecute the invention of Group II, claims 7-14. Affirmation of this election must be made by applicant in replying to this Office action. Claims 1-6 and 15-22 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim

remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Claim Rejections - 35 USC § 112

Claims 7-14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 7, page 12, line 4, "the conveyor belt" lacks antecedent basis.

In claim 9, line 1, "the starchy substance" should be changed to --the starch substance--.

In claim 10, it is unclear how the two different conveyors operating at different speeds constitute a structural limitation. The claim is written in a process-limiting manner. In addition, it is unclear how the speeds are controlled because there is no structure recited to control the speed of the conveyors.

In claim 12, Applicants recite a "second detector" and it is unclear why it is a "second detector" and not just --a detector-- because there is no first detector recited in the present claim or preceding claim 7. This language would make more sense if the present claim depended from claim 11.

In claim 14, line 3, it is unclear what structure generates the low amount signal.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 7 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Czerwonka et al (US 3,019,127) in view of Kasmark Jr. et al (US 5,338,340).

Czerwonka et al teach a coating apparatus for applying dried materials or toppings to a filtering medium comprising a source of starch based solution (6, col. 2, lines 69-72), a source of dry topping material (11), a spray station (5) having a spray chamber and a spray station conveyor (3) passing through the spray chamber, the chamber including at least one nozzle coupled to the starch based solution and arranged for spraying the solution toward the spray station conveyor, the spray station conveyor arranged for receiving the filter medium from on conveyor belt (3) and moving the filter medium through the spray chamber, and a topping station (11) having a dry topping dispenser and a dispenser conveyor, the spray station and the topping station sharing the same conveyor belt (3), wherein the dry topping dispenser applies dry topping material to the surface of the filter medium. Czerwonka et al are silent concerning the use separate conveyors for each station. However, it was known in the art, at the time the invention was made, to use distinctly designed conveyors (40, 48) at each station to handle the filter medium and

wet or dry coating material when making filters as each conveyor as evidenced by Kasmark Jr. et al (see Fig. 1; see col. 6, lines 44-47 and col. 7, lines 14-17 and 32-34). It would have been obvious to one of ordinary skill in the art to provide distinct conveyors for each treatment station as taught by Kasmark Jr. et al in the Czerwonka et al apparatus in order to allow for coating materials to be recycled. Also, it would have been obvious to one of ordinary skill in the art to provide separate conveyors for each station in the Czerwonka et al apparatus in order to minimize coating material transfer from one station to the next thereby lowering downtime for cleaning of the conveyor belts.

With respect to claim 10, this claim has been considered but given no patentable weight as a process limitation is recited.

Claims 8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Czerwonka et al (US 3,019,127) and Kasmark Jr. et al (US 5,338,340) as applied to claims 7 and 10 above, and further in view of Kirk-Othmer.

The teachings of Czerwonka et al and Kasmark Jr. et al have been mentioned above but neither teach or suggest the ratio of starch to water. However, it was known in the art at the time the invention was made, to provide in a typical carbohydrate based adhesive solution a few percent of the carbohydrate with the greater balance of the solution being water as evidenced by Kirk-Othmer (see "Carbohydrate-Based Adhesives"). In recognition of the teachings of Kirk-Othmer, it would have been obvious to one of ordinary skill in the art to provide a few percent of carbohydrate or starch to water so as to provide an adhesive composition of desired viscosity in the apparatus as defined by the combination above.

With respect to claim 9, even though Czerwonka et al and Kasmark Jr. et al are silent concerning the starch adhesive solution being made from wheat, it was known in the art at the time the invention was made, to provide in a typical carbohydrate based adhesive solution, wheat starch as evidenced by Kirk-Othmer. Therefore, it would have been obvious to one of ordinary skill in the art to use wheat or other cited starches from which to make the carbohydrate adhesive composition of desired viscosity in the apparatus as defined by the combination above.

Claims 11 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Czerwonka et al (US 3,019,127) and Kasmark Jr. et al (US 5,338,340) as applied to claims 7 and 10 above, and further in view of Allen et al (US 5,501,872).

The teachings of Czerwonka et al and Kasmark Jr. et al have been mentioned above but neither teach or suggest the use of at least one detector arranged upstream of a coating dispenser for detecting the filter medium to activate the dispenser and apply coating material to the medium. However, it was known in the art at the time the invention was made, to use at least one detector arranged upstream of a coating station for detecting the workpiece to activate dispensing at a given station as evidenced by Allen et al (see col. 8, lines 15-23 and 37-44). It would have been obvious to one of ordinary skill in the art to provide a detector as taught as taught by Allen et al upstream of a given coating station in the apparatus as defined by the combination above in to automate the coating station.

Claims 13 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Czerwonka et al (US 3,019,127) and Kasmark Jr. et al (US 5,338,340) as applied to claims 7 and 10 above, and further in view of Nau (US 3,666,523).

The teachings of Czerwonka et al and Kasmark Jr. et al have been mentioned above and even though Czerwonka et al recognize the use of a hopper (11), neither teach nor suggest the use of a filler to fill the hopper. However, it was known in the art at the time the invention was made, to use a filler to automatically supply a desired amount of coating material to an adjoining hopper as evidenced by Nau (see col. 2, lines 47-55). It would have been obvious to one of ordinary skill in the art to provide a filler as taught by Nau in communication with the hopper used in the apparatus defined by the combination above in to automate supply of coating material to the hopper at the topping station.

Claims 7-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Burke et al (US 6,588,363) in view of Cook et al (US 5,705,207).

Burke et al teach a coating apparatus for applying dried materials or toppings to baked goods comprising a source of adhesive material (24, see col. 18, lines 47-51), a source of dry topping material (30), a spray station (15) having a spray chamber and a spray station conveyor (3) passing through the spray chamber, the chamber including at least one nozzle coupled to adhesive material and arranged for spraying the adhesive toward the spray station conveyor, the spray station conveyor arranged for receiving the baked goods from a conveyor or conveyor belt (see col. 17, lines 63- col. 18, lines 1-3) and moving the baked goods through the spray chamber, and a topping station (110 having a dry topping dispenser and a dispenser conveyor, wherein the dry topping

dispenser applies dry topping material to the surface of the baked goods. Burke et al are silent concerning the use of a starch based adhesive solution to adhere the seasoning to the baked goods. However, it was known in the art, at the time the invention was made, to use a starch based solution to adhere seasoning to baked goods such as potato chips as evidenced by Cook et al (see col. 7, lines 4-25 and example 27 in col. 19). It would have been obvious to one of ordinary skill in the art to use the starch based adhesive coating solution as taught by Cook et al in the Burke et al apparatus in order to provide a lower fat alternative for adhering seasoning to the chips. It is within the purview of one skilled in the art to use the starch based adhesive of Cook et al in the Burke et al apparatus in place of the oil to also preserve the chips.

With respect to claims 8 and 9, see Cook et al (col. 2, lines 16-20).

With respect to claim 10, this claim has been considered but given no patentable weight as a process limitation is recited. However, note Burke et al, col. 10, lines 26-29).

With respect to claims 11 and 12, see col. 12, lines 55-67.

With respect to claim 13, see hopper or seasoning tray (32, Burke et al).

With respect to claims 13 and 14, see auger (30) of Burke et al and col. 8, lines 2-9.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The following patents disclose the state of the art with respect to coating meat: Gore et al (US 6,513,450) and Wang (US 6,054,154).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Laura E. Edwards whose telephone number is (571) 272-1227. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris Fiorilla can be reached on (571) 272-1187. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Laura E. Edwards
Primary Examiner
Art Unit 1734

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August 9, 2004